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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,997	02/25/2004	Raimo Harju	3502-1051	9773

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EXAMINER

LAUCHMAN, LAYLA G

ART UNIT PAPER NUMBER

2877

DATE MAILED: 08/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/784,997

Applicant(s)

HARJU ET AL.

Examiner

L. G. Lauchman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/2004 and 3/2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Modlin et al (US 6,825,921), (“Modlin”).

Modlin discloses an optical measurement instrument for measuring samples, comprising (see Figs. 6-9) a first illumination source for excitation of a sample in a first measurement mode (col. 11, lines 50-65) a detector for measuring emission from a sample (col. 11, lines 50-65), a selectable first optical module (112a) for guiding the excitation beam to the sample, characterized in that it comprises a second illumination source for excitation of a sample in a second measurement mode (col. 11, lines 50-65) and a selectable second optical module (112b) for guiding the excitation beam to the sample, wherein the excitation light beams from the first and second illumination sources are directed to the first and second optical modules in different angles (see Figs. 6 and 7).

The first measurement mode is for measuring photoluminescence. The second measurement mode is for measuring Amplified Luminescent Proximity Homogeneous Assay (see col. 4, lines 33-42).

The said first and second optical modules comprise a mirror for reflecting the excitation beam to the sample, wherein the mirrors of the first and second optical modules are in different angles (see col. 14, lines 1-3).

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 8, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modlin et al (US 6,825,921), ("Modlin").

Modlin discloses an optical measurement instrument for measuring samples, comprising (see Figs. 6-9): a first illumination source for excitation of a sample in a first measurement mode (col. 11, lines 50-65), a detector for measuring emission from a sample (FIG. 6, 145a-d), a selectable first optical module (112a) for guiding the excitation beam to the sample, characterized in that it comprises a second illumination source (col. 11, lines 50-65) for excitation of a sample in a second measurement mode and a selectable second optical module (112b) for guiding the excitation beam to the sample. The patent does not specifically disclose that the second optical module comprises means for adjusting the focus for a shorter distance between the second optical module and the sample than between the first optical module and the sample. However, Modlin discloses lenses 117a,b and aperture 116 positioned in the first and second optical modules 112a and 112b (see Figs 7 and 8) positioned such that only a preselected volume of the sample is illuminated. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide means for adjusting the focus for a shorter distance between the second optical module and the sample than between the first optical module and the sample in Modlin's apparatus in order to project a desired amount of light onto the

sample.

In Modlin's apparatus, said means is an additional lens 117 a or b towards the sample in the second optical module.

The first measurement mode is for measuring photoluminescence. The second measurement mode is for measuring Amplified Luminescent Proximity Homogeneous Assay (see col. 4, lines 33-42).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Modlin et al as applied to claim 5 above, and further in view of Wohlstadter et al (US 6,977,722).

Modlin teaches all as applied to Claim 5 with the exception of the thermo plate with a regulated temperature plate between the measurement head and the sample assay.

The patent '722 discloses an assay plates, reader systems for luminescence test measurements including a thermo sensor and temperature controller within the well (see col. 84, lines 19-51).

It would have been obvious to one skilled in the art at the time the invention was made to provide a regulated temperature plate or a sensor in the invention of Modlin in order to keep the temperature of the samples constant.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to L. G. Lauchman whose telephone number is (571) 272-2418.

The examiner's normal work schedule is 8:00am to 4:30pm (EST), Monday through Friday. If

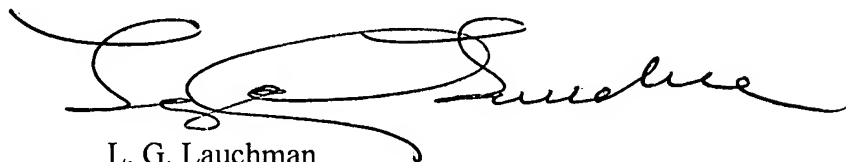
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attempts to reach examiner by the telephone are unsuccessful, the examiner's supervisor Gregory J. Toatley, Jr. can be reached on (571) 272-2059, ext. 77.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application should be directed to the TC receptionist whose telephone number is (571) 272-1562.

A handwritten signature in black ink, appearing to read 'L. G. Lauchman', with a stylized, flowing script.

L. G. Lauchman  
Primary Examiner  
Art Unit 2877

July 14, 2006